

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of remarks herewith.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-32 are pending. Claims 1-21 and 23-32 are independent. No new matter has been added. It is submitted that these claims, as originally presented, were in full compliance with the requirements of 35 U.S.C. §112. Changes to claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. RESPONSE TO REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 1-32 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,311,194 to Sheth, et al. (hereinafter, merely "Sheth") in view of U.S. Patent No. 6,505,160 to Levy, et al. (hereinafter, merely "Levy") further in view of U.S. Patent Publication No. 2005/0210101 to Janik (hereinafter, merely "Janik").

Applicants respectfully traverse the rejections based on Janik as improper because Janik is not prior art.

The present application has an effective filing date of April 10, 2000.

Indeed, Janik was filed on May 17, 2005, which is continuation-in-part of application No. 09/924,646, filed on August 7, 2001, which is continuation-in-part of application No. 09/841,268, filed on April 24, 2001, now abandoned, and which is continuation-in-part of application No. 09/519,007, filed on March 3, 2000.

Moreover, the related U.S. Applications of Janik also include provisional application No. 60/199,638, filed on April 25, 2000, provisional application No. 60/268,434, filed on February 12, 2001, provisional application No. 60/223,872, filed on August 8, 2000, and provisional application No. 60/122,727, filed on March 4, 1999.

i. The Subject Matter of Janik Relied Upon by the Office Action is Not Entitled to Filing Date of Application No. 09/519,007, so Janik Does NOT Antedate the Applicants' Earliest Effective Filing Date

The Office Action (see page 3) asserts that Janik discloses "time data pertaining to the audio/video content being currently played to be acquired and tagged with the audio/video data", and refers to Janik, paragraph [0134]. However, Applicants submit that Application No. 09/519,007 does NOT disclose the above features mentioned in Janik, so Application No. 09/519,007's filing date March 3, 2000 can not be used as prior art date for Janik.

Therefore, Janik is not entitled to filing date of Application No. 09/519,007 (March 3, 2000), *i.e.*, Janik's filing date May 17, 2005 do NOT antedate the Applicants' earliest effective filing date April 10, 2000.

ii. The Subject Matter of Janik Relied Upon by the Office Action is Not Entitled to Filing Date of Provisional Application No. 60/122,727, so Janik Does NOT Antedate the Applicants' Earliest Effective Filing Date

The Office Action (see page 3) asserts that Janik discloses "time data pertaining to the audio/video content being currently played to be acquired and tagged with the audio/video data", and refers to Janik, paragraph [0134]. However, Applicants submit that Provisional Application No. 60/122,727 does NOT disclose the above features mentioned in Janik, so Provisional Application No. 60/122,727's filing date March 4, 1999 can not be used as prior art date for Janik.

Therefore, Janik is not entitled to filing date of Provisional Application No. 60/122,727 (March 4, 1999), *i.e.*, Janik's filing date May 17, 2005 do NOT antedate the Applicants' earliest effective filing date April 10, 2000.

Therefore, Applicants submit that Janik is not a valid prior art reference and request withdrawal of the rejection and allowance of the present application.

CONCLUSION

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing remarks, all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: 

Thomas F. Presson
Reg. No. 41,442
(212) 588-0800